

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

Initially, the Examiner is thanked for the interview with the undersigned that was conducted on April 3, 2007. During that interview, the amendment to claim 1 that is provided herein was discussed, as well as how that differed from the prior art.

Claims 1, 37, 45 and 56 have been amended herein. Support for these amendments can be found throughout the application as originally filed, for example in paragraphs [0073] to [0087] of the application as published by the United States Patent and Trademark Office.

Rejection under 35 U.S.C. 102

The rejection states that Claims 1 to 4, 26, 27, 29, 37, 38, 42 to 46, 55, 56, 61 to 70 currently on file, are rejected under 35 U.S.C. 102 (as anticipated by United States Patent No. 7,072,305 to Gregson, hereinafter referred to as Gregson).

Having specific regard to Claims 1, 37, 45 and 56, the rejection alleges that Gregson discloses providing a plurality of example signatures (col. 5, line 30, baseline), each of the example signatures including information indicative of a specific network condition (col. 5, lines 31-33), and at least a part of one or more example signatures indicative of one or more

of packet loss, packet ordering and packet timings (col. 5, lines 33-36), wherein each specific network condition causes a unique behavior directly indicative of data transmission performance in the computer network (col. 5, lines 39-40, trigger an alert or potential or actual problem). The rejection further alleges that Gregson discloses acquiring test data (col. 7, lines 24-25), which test data is based on actual propagation of test packets (col. 7, lines 12-13, predetermined streams of data) along the path. The rejection additionally alleges that Gregson discloses creating a test signature from the test data, said test signature being an organized collection of information obtained from said test data (col. 7, lines 24-25), and at least a part of said test signature indicative of one or more of packet loss, packet ordering and packet timings (col. 7 line 26). In addition, the rejection further alleges that Gregson discloses comparing the test signature to the example signature (col. 7 lines 26-28) and identifying at least one of the example signatures which match the test signature according to a match criterion (col. 5 lines 36-37, packet loss or latency that exceeds a threshold), thereby identifying at least one network condition affecting the computer network (col. 5 lines 39-40).

Without conceding to the correctness of the rejection's objection, but solely in order to advance prosecution, Applicant has amended independent Claims 1, 37, 45 and 56 to further

define the scope of protection being sought. As amended, these claims define that the plurality of example signatures are indicative of a plurality of specific network conditions, and that each of the example signatures include information indicative of a specific and different network condition. Support for this amendment can be found throughout the application as originally filed, for example in paragraphs [0073] to [0087] of the patent application as published by the United States Patent and Trademark Office.

Applicant asserts that Gregson is directed to a method and apparatus for testing at least one link in a communications network, as expressly defined in col. 2, lines 51-52. In particular, Gregson discloses the determination of a "baseline". With reference to col. 5, lines 31 to 33, the baseline is defined as "one or more operational criteria that characterize the performance of the network". Gregson continues to further define an example of a baseline as being "expressed by a threshold level of packet loss and/or latency". Applicant therefore asserts that a "baseline" as taught by Gregson is substantially a desired level of operation of a network, to which is compared an evaluated level of operation of the same network. An example of this evaluation is expressly taught by Gregson in col. 5, lines 36 to 40, wherein "packet loss or latency that exceeds the threshold level by a predetermined

percentage or ratio...may trigger an alert of a potential or actual problem...". This comparison as taught by Gregson is merely a binary comparison with the threshold value or "baseline" and enables the determination of whether the network operation is above the threshold value or below the threshold value. Applicant asserts that this comparison as taught by Gregson, at most, provides a means for the determination of the existence of a problem.

During the interview, the Examiner queried whether Gregson could be changed or used to identify different baseline levels. Applicant asserts that even if Gregson were extended to include a plurality of threshold values or "baselines", these multiple baselines as defined by Gregson would all be indicative of the existence of the same problem. Thus, for a particular case, the threshold comparison of the evaluated level of operation of the network with multiple baselines or threshold values would merely provide a discrete range of severities regarding the exact same problem.

In direct contrast, the claims like 1, 37, 45 and 56 provide a plurality of example signatures indicative of a plurality of specific network conditions, each of these example signatures representative of a specific and different network condition. Each of these specific and different network conditions has a known identity and causes a known unique

behavior of the network directly indicative of data transmission performance of the computer network. Thus, each of the specific and different network conditions identifies a unique cause of a measurable behavior of the network. These claims hence enable determining which of the plurality of example signatures matches a test signature created for a particular network, and through the selection of this example signature, a specific network condition is identified, wherein this identified specific network condition is different from the other specific network conditions represented by the plurality of example signatures. Therefore the claims define a means for not only determining if a network condition exists, but further a means for determining what the network condition is.

Applicant therefore asserts that nothing in Gregson discloses, or even suggests a plurality of example signatures indicative of a plurality of specific network conditions, wherein each of the example signatures includes information indicative of a specific and different network condition, as is expressly defined in Claims 1, 37, 45 and 56, submitted herewith.

Applicant asserts that Gregson does not teach or disclose a method, apparatus and computer program product for identifying network conditions affecting a computer network, as expressly defined in independent Claims 1, 37, 45 and 56, submitted

herewith and therefore strongly asserts that independent Claims 1, 37, 45 and 56, submitted herewith are novel over Gregson.

Applicant asserts that, based on the reasons outlined above, independent Claims 1, 37, 45 and 56, submitted herewith, are novel over Gregson. As Claims 2 to 4, 26, 27, 29, 38, 42 to 44, 46, 55, and 61 to 70 are directly or indirectly dependent on one of Claims 1, 37 or 45, these dependent claims are equally novel over Gregson.

Applicant therefore asserts that Claims 1 to 4, 26, 27, 29, 37, 38, 42 to 46, 55, 56, 61 to 70 currently on file, comply with 35 U.S.C. 102(e) and therefore respectfully requests that this objection be withdrawn.

Rejections under 35 U.S.C. 103

The rejection states that Claims 30, 39 and 40 currently on file, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregson in view of United States Patent No. 6,757,255 to Aoki *et al.*, hereinafter referred to as Aoki. The rejection admits that Gregson does not specifically disclose the packet comprising an ICMP ECHO request. The rejection alleges that it would have been obvious to one of the ordinary skill in the art at the time of the invention that the performance measuring methods as disclosed by Gregson may be modified to apply ICMP echo packets as disclosed by Aoki, alleging that the motivation

for this modification is to pass information from one device to another.

Based on the above, Applicant asserts that independent Claims 1 and 37, on one of which Claims 30, 39 and 40 directly or indirectly depend, are novel over Gregson. The Applicant further asserts that nothing in Gregson teaches or suggests that "each of the example signatures including information indicative of a specific network condition, and at least a part of one or more example signatures indicative of one or more of packet loss, packet ordering and packet timings, wherein each specific network condition causes a known unique behavior directly indicative of data transmission performance in the computer network" as expressly defined in independent Claims 1 and 37. Applicant therefore asserts that a worker skilled in the art, having regard to Gregson, would not have been motivated to as defined in independent Claims 1 and 37, and therefore submits that Claims 1 and 37 are inventive over Gregson.

As Aoki does not cure the fundamental deficiencies identified in Gregson, Claims 30, 39 and 40 currently on file are therefore inventive in light of Gregson in view of Aoki. Applicant therefore asserts that Claims 30, 39 and 40 currently on file, comply with 35 U.S.C. 103(a) and respectfully requests this objection be withdrawn.

Applicant asks that all claims be allowed. No fee is believed to be due, however please apply any credits or additional charges to deposit account 06-1050.

Respectfully submitted,

Date: April 30, 2007 /Scott C Harris/
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